
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:18-cv-01130-JLS-GJS

Date: March 06, 2019

Title: Dana Weiss, et al. v. Trader Joe's Company

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANTS:

Not Present

Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER (1) STRIKING FIRST AMENDED COMPLAINT (Doc. 27); AND (2) DENYING DEFENDANT'S MOTION TO DISMISS AS MOOT (Doc. 30)

Before the Court is a Motion to Dismiss filed by Defendant Trader Joe's Company. (Mot., Doc. 30.) Plaintiff Dana Weiss opposed (Opp., Doc. 32) and Defendant replied (Reply, Doc. 34). The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing set for March 8, 2019, at 10:30 a.m., is VACATED. For the following reasons, the Court STRIKES Plaintiff's First Amended Complaint without prejudice and DENIES Defendant's Motion to Dismiss as moot.

On November 20, 2018, the Court dismissed Plaintiff's Complaint and gave her narrow leave to amend. (MTD Order, Doc. 23.) The Court was explicit that the "refresh," "plus symbol," "hydrate," "alkalinity," "perfect balance," and "satisfy" representations were nonactionable "in that they either amount to puffery or otherwise would not deceive a reasonable consumer as a matter of law," (*id.* at 5, 9–13) and that any First Amended Complaint could not "be based on any alleged misrepresentation that the Court concluded was nonactionable as a matter of law" (*see id.* at 17). The Court gave Plaintiff "leave to amend, *but only as to the 9.5 pH balance representation*," which the Court found actionable but inadequately pled. (*Id.* at 5 (emphasis added).)

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Plaintiff's First Amended Complaint flouts the Court's Order. (FAC, Doc. 27.) Plaintiff reasserts that the refresh (*id.* ¶ 79), plus symbol (*id.*), hydration (*id.*), alkalinity (*id.* ¶ 78), perfect balance (*id.*), and satisfy (*id.* ¶ 79) representations are false and misleading. Plaintiff tries to bolster these nonactionable claims with articles attached to the First Amended Complaint related to the health benefits of alkaline water. (*Id.* ¶¶ 2, 23–29, 32–33; Exs. 1–7, 10–11, Docs. 27-1 & 27-2.) Further, Plaintiff includes *new* allegations. (*See, e.g.*, FAC ¶ 54.) Plaintiff explains her noncompliance with the Court's Order by complaining that she “was not even given one chance to amend certain facts as to on-label advertisements.” (Opp. at 10.) Disagreement with a court order is not a valid basis to violate it.

Plaintiff suggests that the Court should “disregard [the improperly repeated and new allegations] as it sees fit and decide what claims, if any, will proceed forward based on [the] ‘9.5+’ representation.” (Opp. at 11.) However, the Court will not parse through Plaintiff's allegations to determine which comply with the prior Order. Rather, the Court finds it appropriate to STRIKE Plaintiff's First Amended Complaint in its entirety without prejudice. *See Aloe Vera of Am., Inc. v. United States*, 376 F.3d 960, 964–65 (9th Cir. 2004) (“All federal courts are vested with inherent powers enabling them to manage their cases and courtrooms effectively and to ensure obedience to their orders.”) (quoting *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001)).

Accordingly, Plaintiff's First Amended Complaint is STRICKEN without prejudice and Defendant's Motion to Dismiss is DENIED as moot. Plaintiff may file a Second Amended Complaint no later than **fourteen (14)** days from the issuance of this Order that complies with the Court's prior Order and is based *only* on the 9.5 pH balance representation. Further failure to comply with the Court's November 20, 2018 Order will result in sanctions. If Plaintiff fails to timely file a Second Amended Complaint, the Court will immediately dismiss this action.

Initials of Preparer: tg